American Petroleum Institute

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US Oil & Gas Association

October 3, 2002

Mr. David Kaiser
Federal Consistency Coordinator, Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic Atmospheric Administration
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910
Attention: Federal Consistency Energy Review Comments

Re: The National Oceanic Atmospheric Administration's, "Procedural Changes to the Federal Consistency Process" (*Federal Register*, Vol. 67, No. 127, Tuesday July 2, 2002).

Dear Mr. Kaiser:

We are pleased to have the opportunity to comment on the advanced notice of proposed rulemaking (ANPRM) on the "Procedural Changes to the Federal Consistency Process" (*Federal Register*, Vol. 67, No. 127, Tuesday July 2, 2002) and represent the views of the American Petroleum Institute, the Domestic Petroleum Council, Independent Petroleum Association of America, International Association of Drilling Contractors, Natural Gas Supply Association, National Ocean Industries Association, and the United States Oil and Gas Association. These seven national trade associations represent thousands of companies, both majors and independents, engaged in all sectors of the U.S. natural gas and oil industry, including exploration, production, distribution, marketing, equipment manufacture and supply, and other diverse offshore support services.

We support the congressional intent of the Coastal Zone Management Act (CZMA) of 1972, which created a national program to manage and balance competing uses of, and impacts to, coastal resources. The National Oceanic and Atmospheric Administration (NOAA) implements the CZMA through the federal consistency regulations. Through this rulemaking, NOAA has recognized that improvements can be made to the consistency review process and we applaud this action.

NOAA has focused on a number of key issues (e.g. timing for Secretarial appeals decisions, necessary information, consolidating environmental reviews) that can impede development of much needed domestic natural gas and oil supplies. We

appreciate the opportunity to comment on this rulemaking and strongly support making changes to this regulation to clarify information needs, create deadlines for decisionmaking, and streamline the review and approval process. This letter highlights the areas of greatest concern with more detailed comments provided in the attachment.

Federal Consistency Process Has Been Misused Delaying Key Energy Projects

Department of Commerce (DOC) regulations issued on December 8, 2000, revised the Federal Consistency Regulations at 15 CFR Part 930. The recently issued ANPRM will allow NOAA to evaluate whether "limited and specific procedural changes or guidance to existing federal consistency regulations are needed to improve efficiencies in the federal consistency procedures and Secretarial appeals process, particularly for energy development on the Outer Continental Shelf (OCS)." The US natural gas and oil industry strongly believes that procedural, as well as substantive changes are needed and urges NOAA to act expeditiously on the rulemaking process.

One of the major concerns about the 2000 regulations is that they are overly broad and therefore, have been applied by some states to stall or stifle resource development, even though such development is in the national interest. Such a result is inconsistent with the purposes of the CZMA, which emphasizes the need to give "adequate consideration of the national interest involved in planning for, and managing the coastal zone...including the siting of [energy] facilities..." (16 USC 1452(D)). CZMA contemplates a balanced approach which would protect the environment of the coastal zone while allowing for the development of domestic energy resources in order to reduce U.S. dependency on foreign oil.

States can use the CZMA to call for the cancellation of an energy project, even after a company has received federal licensing approval and approval by the state and the local community. In perhaps the most egregious example, one energy project is currently on hold because a state claimed it was inconsistent with its coastal zone management plan, even though the project had already received the proper certifications from the federal permitting agency, after exhaustive hearings were held and a draft environmental impact statement prepared, and all federal agencies involved had worked closely with the community.

In this case, the state's interpretation of the consistency regulations was misdirected by an overly expansive definition of "coastal effects". Despite the congressionally mandated authority of the federal licensing agency, the state challenged the project. This illustrates why the regulations need to be changed in order to prevent such misinterpretation.

The Current NOAA Rulemaking Is An Important First Step but Additional Issues Such as Interagency Consultation Must Be Addressed

The CZMA was designed to enhance communication and resolve conflicts between federal agencies responsible for permitting activities on Federal lands and coastal states charged with managing competing uses of coastal resources. This goal was highlighted recently in the President's National Energy Plan and Executive Order 13212 ("Actions to Expedite Energy-Related Projects", May 18, 2001) calling for streamlining energy project permitting.

Another Executive Order, E.O.13211 ("Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use", May 18, 2001), stressed the importance of assessing the impact of federal government agency policy decisions on energy supplies, further emphasizing the importance of enhancing US energy security by developing domestic energy resources. Under this Executive Order, NOAA should recognize that the development and implementation of its regulations can significantly affect the supply and distribution of energy.

While the ANPRM acknowledges NOAA's responsibility under the President's National Energy Policy (NEP) for coordination between NOAA and the Minerals Management Service (MMS) in OCS energy development, the ANPRM does not specifically address how the agency plans to implement the requirement that the Departments of Interior and Commerce work together to solve interagency conflicts and develop mechanisms to address differences in interpretation of the Outer Continental Shelf Lands Act (OCSLA) and the CZMA. The OCSLA directs the MMS to regulate the drilling and production activities associated with the extraction of natural gas and oil on federally submerged lands in the OCS, and provides that the "States are entitled to participate **to the extent consistent with the national interest**, in the policy and planning decisions made by the Federal Government relating to the exploration...development and production of, minerals of the [OCS]. (43 U.S.C. 1332) For an effective implementation of the federal consistency regulations, in balance with the goals and mandates of the OCSLA, the communication between the two agencies should be ongoing. Under the authority granted under the OCSLA, the MMS has developed detailed regulations for the natural gas and oil industry that have been in place since 1980. Any revisions to the federal consistency process should incorporate a permanent mechanism for close consultation and coordination between NOAA and the MMS. We recommend that a formal Memorandum of Agreement be developed between these two agencies which would outline the responsibilities of each agency under the respective statutes, as well as how each would participate in this process to meet the objectives of the NEP and Executive Orders 13211 and 13212.

The Data and Information Needed for the Review Process Should be Clearly Defined at the Outset to Eliminate Delays Caused by Continuing Requests for Data

One of the issues that frequently arises during the consistency review process is that states are allowed to request additional data and information during this process even though they may have already received this information, through the MMS, in the documents prepared and submitted to the federal permitting authority by a company. Since MMS has very thorough environmental review regulations, information generated for this process should be honored by the states and not requested anew.

In the case of the natural gas and oil industry, states should work with the federal permitting agency, the MMS, to identify what information is necessary at the beginning of the process. The MMS has recently worked with each of the Gulf States to address issues associated with the federal consistency regulations, including an effort to give specific guidance on what information the states may need to determine consistency. An interagency dialogue between the MMS and NOAA is vitally important in bringing greater certainty to the consistency process, especially given that there is overlap between the information requirements of OCSLA and CZMA.

Consistency Review Should be Open to States that Demonstrate Adverse Impacts

Energy producers operating in the Eastern Gulf of Mexico, the Atlantic, Pacific, and Alaska OCS have experienced costly permit delays and/or untenable investment uncertainty, even where the activities have not been demonstrated to adversely impact states' coastal zones. We urge NOAA to monitor the states' interpretations of the "effects test" (the test used to determine effects on a coastal zone) to ensure that states assert the right of consistency review in a reasonable manner, especially for projects at increasing distance from a state's coastal zone. Examining implementation of the "effects test" is important because the federal determination process impacts each OCS planning and leasing decision, and the state objection process impacts each expensive, high-risk exploration and development decision once a lease is acquired. States should not be allowed an open-ended assertion of consistency review over all OCS leasing activities regardless of their distance from a state's coastal zone. States have objected to projects far from their shores, raising real questions as to the effects of such potential projects on their coastal zone.

Timely Decisions on Override Appeals to the Secretary of Commerce Should be Ensured by Establishing a Deadline for Decisions

The process of federal and state checks and balances has generally worked well in the Central and Western Gulf of Mexico, where industry has compiled a strong record for good stewardship of public lands and for operating offshore in a safe and environmentally sensitive manner. This system stands in contrast to experience regarding reviews for the Atlantic, Pacific, Alaskan and Eastern Gulf

of Mexico OCS. While NOAA is technically accurate when it states in the ANPRM that states have concurred with 93% of all federal actions reviewed, it should be noted that many federal offshore exploration and development projects included in the remaining seven percent were sent to the Secretary of Commerce for override appeals and were in areas considered frontier areas (geographic areas such as the OCS and Alaska or technological frontiers such as supplies made recoverable by new techniques). A 2002 assessment updating their *1995 National Assessment of United States Oil and Gas Resources* prepared by the MMS and US Geological Survey, found that the mean estimate of undiscovered technically recoverable OCS resources likely to be found in frontier areas are 75 billion barrels of oil and 358 trillion cubic feet of gas, or 83% of the undiscovered oil resources and 81% of natural gas resources. This represents all the gas supplies for 20 years and all the oil supplies needed for 35 years for the entire United States. Thus, in those cases where the Secretary of Commerce upheld state decisions, these decisions adversely impacted the nation's energy supplies.

Even where the Secretary has overridden a state's objection, the appeals process has been hampered by delays. For example, during the 1990's, appeals involving OCS activities took from 16 months to 4 years from a state's initial objection to the final override decision. The fact that these delays result in cumulative adverse impacts on domestic energy supplies is undeniable.

Currently, there is no deadline for when the record closes in an appeals decision after it has been sent to the Secretary of Commerce. A deadline for the close of the record in an appeal should be set and begin when the appeal to the Commerce Secretary is filed. A deadline for the close of the record, for example, a time period such as 120 days from the filing of the appeal, is critical to prevent unnecessary and inexplicable delays in the issuance of an appeal decision. If an extension is necessary, then a Federal Register notice justifying the need for the extension must accompany it. The timeline for completion of all actions should begin when a CZMA appeal is filed.

Conclusion

Natural gas and oil operations on the OCS contribute a large portion of the energy produced and used in the US and will be increasingly important in the future. Over 83% of the recoverable oil resources, and over 81% of the recoverable gas resources, remaining to be discovered in the U.S. lie in the three "frontiers" of Alaska, the OCS, and unconventional gas onshore in the Lower 48. Other forms of alternative energy development, such as liquefied natural gas, also will be important to future energy supplies. Federal consistency regulations directly affect operations in the OCS and consequently domestic energy supplies.

Until the federal consistency regulations provide clarity and predictable timeframes, they will continue to delay or halt energy projects that are more important than ever in enhancing domestic energy supplies and reducing dependence on foreign oil.

Changes in the consistency review process are needed to avoid unnecessary delays and the need for litigation. NOAA's ANPRM recognizes a number of areas within the CZMA regulations that could be clarified and/or improved. Specifically, we strongly urge that:

- A permanent mechanism for interagency consultation and coordination be developed and incorporated into the consistency review process.
- The data and information needed for the review process should be clearly defined and information prepared for the federal permitting process and environmental review should be considered as part of the review without a new data request.
- Participation in the consistency review should be open to states that demonstrate adverse impacts.
- To ensure timely decisions on override appeals, a deadline for decisions should be set and begin when an appeal is filed.

We encourage NOAA to continue the rulemaking process by issuing a proposed rule addressing these issues. If you have any questions, please contact Ms. Betty Anthony of the American Petroleum Institute at 202-682-8116.

Sincerely,

American Petroleum Institute

Domestic Petroleum Council

Independent Petroleum Association of America

International Association of Drilling Contractors

National Ocean Industries Association

Natural Gas Supply Association

US Oil & Gas Association

Attachments

COMMENTS OF
AMERICAN PETROLEUM INSTITUTE,
DOMESTIC PETROLEUM COUNCIL,
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS,
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
NATURAL GAS SUPPLY ASSOCIATION, AND
UNITED STATES OIL AND GAS ASSOCIATION
TO THE DEPARTMENT OF COMMERCE ADVANCED NOTICE OF PROPOSED RULEMAKING ON PROCEDURAL CHANGES TO THE FEDERAL CONSISTENCY PROCESS

67 Federal Register 44407 (July 2, 2002)

1. Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

In the consistency process, a lessee applies for a permit to a federal permitting agency such as the MMS. Federal permitting agencies have regulations under which permit applicants must generate data for an Environmental Assessment or Environmental Impact Statement as required under the National Environmental Policy Act. This information is submitted to the state for review under its coastal zone management program. At this point, a state may object or concur to the project being consistent. In some cases, the states repeatedly request more data and information; too often causing significant delay in the issuance of the permit.

When a federal agency, in this case MMS, submits information to a state for a consistency review, all necessary data and information as required by MMS Notice to Lessee No. 2002-G08, (Attachment 1, Appendix I) must be complete and any subsequent requests for additional information should be unnecessary. The state and the MMS should agree prior to the review of such a permit specifically what constitutes "necessary data and information". This would prevent delays in the decisionmaking process. The MMS has very thorough environmental review regulations, and the information generated for this process should be honored by states. This would eliminate the need for additional data requests. Industry supports the process of the recently issued (effective August 29, 2002) MMS Notice to Lessee's mentioned above where MMS consulted with Gulf States on achieving agreement in what constitutes necessary data and information as well as creating a deadline for requests for information. Industry supports creating and continuing interagency dialogue in this regard.

In the case where a consistency determination is sent to the Secretary of Commerce for an appeals decision, the information developed for the

consistency determination and for the permits should comprise the decision record. Requests for additional information to add to an appeals decision are generally unnecessary in that all environmental, socio-economic and other essential information has already been developed and does not need to be regenerated.

NOAA should determine whether there are circumstances where states would be allowed to seek additional information beyond what is specified, only if that state can show how the request is specifically needed to determine consistency with a particular enforceable policy of that state. In such a case, NOAA should further delineate when a state may request this information and we recommend the following parameters:

- State requests for information should follow the lead of the MMS and should conform to a known set of requirements specified in MMS regional requirements and/or Commerce regulations.
- Commerce regulations at sections 930.58 and 930.76 should be revised to:
  - More specifically identify the types of information that the state is entitled to receive;
  - Provide a mechanism for applicants to obtain relief if a state attempts to request information beyond what is specified in Commerce and MMS requirements.
- NOAA should monitor states' requests for additional information to ensure that they are not arbitrary and result in unnecessary delay.
- NOAA should make corresponding changes to its regulations based on the MMS NTL for the Gulf of Mexico region.
- States should not be allowed to request additional information absent a demonstration of linkage between specific state enforceable policies and the information requested.

2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.

Adding a specific deadline by which the Secretary must issue a decision in a consistency appeal is one of the most important changes that could be made to improve the Federal consistency process. Section 316 of CZMA provides that the Secretary of Commerce must issue a final decision on an override appeal no later than 90 days from publication of a Federal Register notice indicating when the decision record has been closed. However, override appeals continue to be drawn out, as there is no clear deadline for the close of the record. Commerce regulations at section 930.130 require that the notice of the close of the record

should be published no sooner than 30 days after the close of the public comment period, but do not specify a deadline by which the record should be closed. These regulations should be revised to include a reasonable deadline such as 120 days from the date the appeal is filed for the close of the record.

3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

The regulations at section 930.60 contain a consistency review "start" provision, which begins when the state receives the consistency determination and supporting information under section 930.58. The problem is that unlimited requests for additional information can delay the start of this review period indefinitely. The regulations should be revised to provide that a state's requests for information do not stop the timeline without NOAA approval. The state should not be the final arbiter of when the timeline begins.

The MMS prepares an Environmental Impact Statement (EIS) for all OCS lease sales as required under the National Environmental Policy Act (NEPA) which describes the cumulative effect of the exploration and development activities anticipated to occur. States can utilize the environmental impact analyses in the lease sale EIS to calibrate impacts from individual projects. Additionally, the MMS has given notice of the preparation of a programmatic environmental assessment (EA) for exploratory drilling and associated activities in the sale area of the Eastern Planning Area of the Gulf of Mexico. This programmatic EA is intended to consider the area wide environmental impacts of exploratory drilling. Subsequent site-specific EA's prepared by MMS for an operator's Exploration Plan can then be tiered from the programmatic EA and the analyses can be focused on the specific activities proposed. This programmatic EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. This is a good example of a federal agency working within the statutory framework of CZMA and OCSLA to coordinate the completion of environmental review documents with the information needs of the States. Industry recommends that this approach be adopted in the federal consistency requirements.

4. Whether a regulatory provision for a ``general negative determination," similar to the existing regulation for ``general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

We support a regulatory provision for a ``general negative determination," similar to the existing regulation for ``general consistency determinations," 15 CFR

930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively. This would improve the efficiency of the Federal consistency process. For example, the MMS has worked with several of the Gulf States to develop a process for presumption of concurrence in 25 days if the state does not reply to MMS after a plan has been sent to them. Although, this does not go as far as a "general negative determination", it does streamline the permitting process. We support continued communications with the Gulf States to work toward the "general negative determinations" on offshore pipeline rights-of-way and exploration and development projects far from shore.

5. Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the ``listing'' and ``geographic location'' descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

In order to address this question, it is important to review the legislative history of the 1990 amendments to CZMA. These amendments removed the word "directly" before "affecting the coastal zone" in the statute's provision for federal agency activity consistency certification in section 307(c)(1)(A), to ensure that OCS lease sales were subject to consistency review "*within* or *outside* the coastal zone." This did not, however, give *carte blanche to* the states to assert consistency review over all OCS leasing activities no matter how far beyond a state's coastal zone they take place. Rather, "effects" must still be demonstrated. Moreover, this legislative history does not apply to the entirely separate provisions regarding consistency review for federal permits in section 307(c)(3)(A), or OCS plans in section 307(c)(B). Congress made it very clear that technical amendments to the provision calling for state review of private permits were made solely to conform this provision to changes made to the federal agency activity provision, and did not expand a state's scope of consistency review.

Despite the clear legislative history, Commerce's preamble blurs the distinction between "federal *agency* activities" and "federal activities," in general, e.g., approval of private permits/licenses, and OCS plans, and incorrectly emphasizes the 1990 amendments' expansion of consistency review for "federal activities." (65 Fed. Reg. 77125 middle column, December 8, 2000). Such statements should be corrected.

Additionally, industry urges NOAA to monitor the states' interpretations of the "effects test", and the implementation of the "listing and geographic location" regulations found at 930.53, to ensure that states assert a right of consistency

review in a reasonable manner. This is particularly applicable for projects at increasing distance from a state's coastal zone.

Industry also recommends that NOAA revise the definition of "Coastal Use or Resource" at section 930.11. One of the broadest provisions in the regulations is the provision creating a new threshold based on whether effects are "reasonably foreseeable," including cumulative and secondary effects on a coastal use or resource. By adding terms such as "scenic and aesthetic enjoyment" and "air", this definition goes far beyond the statutory definition of coastal use or resource, and inappropriately extends the "reach of reasonably foreseeable effects." It could allow a state to object to the visual effect of an offshore platform far from its coast, or over air emissions from a platform when the emissions have no significant effect on coastal air quality. Moreover, the definition now includes "minerals" and "invertebrates" which should be further clarified. Since Commerce's regulations do not provide a significant threshold for these effects, a state can object to a permit application if, for example, there are insignificant air quality impacts to the coastal area or a perception of impact on scenic and aesthetic enjoyment.

Commerce regulations should delete the provision that an action with minimal or no environmental effects may affect coastal use. Section 930.33 provides that an action, which has minimal or no environmental effects, may still have effects on a coastal use (public access, etc.), if it initiates an event or series of events where coastal effects are reasonably foreseeable. Requiring consistency review without regard to *significance* of environmental impact is not good public policy. This provision should also be deleted.

6. Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not ``described in detail'' in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

Industry believes that a single consistency certification for an OCS EP or DPP should cover associated approvals such as air and water permits necessary to the EP or DPP. Commerce regulations currently require that an Operator submitting an OCS plan certify that all activities described in detail in the plan are consistent with the State's approved CZM program. Section 930.76(c). Activities such as air and water permits have not been considered activities "described in detail" in the OCS plan, because MMS does not explicitly require this. However, in practice, MMS expects that such activities will be described in greater detail and operators have been doing so. This dichotomy between what is required and what is actually done has resulted in delayed decisions on consistency, e.g., Manteo where North Carolina issued one decision on the consistency of the Plan of Exploration (POE), and a few months later issued a separate decision on the ancillary water permit. As a result, duplicate appeals had to be filed.

Ideally, MMS should issue a directive making it clear that air and water permits are required to be described in detail in the OCS plan, and are therefore covered under one consistency certification. Likewise, federal consistency regulations should be revised to clarify that the States must provide consistency review and, if applicable, Commerce should issue a decision on an override appeal of the OCS plan and OCS-related activities at the same time.

Additional Issues Concerning CZMA Federal Consistency Requirements

These comments summarize additional difficulties imposed by the new regulations and actual implementation by MMS and the states related to the questions raised in the ANPRM, but not specifically addressed. Industry also suggests revisions to the regulations to address these concerns.

1 Delete Conditional Concurrence Procedures or Narrow the Conditions that Can be Imposed

New conditional concurrence procedures for both federal agency and permit application consistency certifications are inconsistent with prior Commerce legal opinions and language in CZMA which provide a state with only two choices: concur or object to a consistency certification. At a minimum, Commerce regulations should be revised to place some limits on conditions that can be imposed. Even though the regulations require that the conditions must be based on specific enforceable policies, this is insufficient as such policies can be broadly construed.

2. Clarify that the Determination of Whether a Federal Activity Has an Effect is In the Purview of the Federal Agency Conducting the Activity

Commerce has insisted that pre-lease activities such as the 5-Year OCS lease plan are "development projects" under section 930.33 and are subject to consistency review. This is inconsistent with the legislative history of the 1990 amendments, which intended to subject lease sales to consistency review but did not exhibit concern over pre-lease activities. Commerce should defer to the good faith determinations of the MMS or any other Federal agency conducting the activity as to whether the activity should be subject to consistency review. Certainly with regard to OCS activities, Congress did not intend the state's role under CZMA to disrupt the Department of Interior's principal authority under the OCSLA over OCS exploration and production activities.

3. Delete Interstate Consistency Regulations

Interstate consistency regulations at 15 CFR Part I call for states to identify geographic areas outside of their own coastal zone in other states in which a

federal permit/license activity could occur that affects its coastal zone. A logical implementation of the new consistency review for activities "outside of the coastal zone" contained in the 1990 amendments does not lead to interstate review. These regulations also raise constitutional issues as to whether one State's policies can be legally enforceable against federal activities taking place entirely in a different state.

4. Review the Requirement that an Activity Must "Significantly or Substantially" Further the National Interest

Commerce regulations at section 930.121 require that an activity must "significantly or substantially" further the national interest before the Secretary can override an objection based on the statutory "national interest" criteria. This change can potentially be very problematic. While the preamble to the 2000 regulations state that "an example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development," there is no such statement of intent with regard to oil and gas *exploration.* Exploration and development go hand-in-hand, without exploration the industry's ability to meet the nation's energy demands is in jeopardy. The preamble should be revised to make it clear that exploration meets the new override criteria otherwise the term "significantly or substantially" should be deleted from the regulations.

5. Carefully Review the *Implementation* of the Federal Consistency Requirements

Section 930.3 imposes a requirement on the Director of the Office of Coastal Resource Management to "...conduct a continuing review of approved management programs." This is a critical part of the federal consistency program and one that should receive sufficient resources and funding within OCRM to fully effectuate. The goal of this continuing review requirement is to ensure that OCRM "evaluate[s] instances where a State agency is believed to have failed to object to inconsistent federal actions, or *improperly objected to consistent federal actions."* A related provision in Section 930.6 requires that the State agency "*uniformly* and comprehensively apply the enforceable policies of the State's management program and to efficiently coordinate all State coastal management requirements." An evaluation of whether the State is applying their enforceable policies uniformly to the whole spectrum of reviewable federal activities should be an integral part of OCRM's continuing review of state programs imposed by section 930.3. OCRM should carefully monitor the states' application of their management programs to evaluate whether a state is inappropriately singling out a particular proposed federal activity in or outside its coastal zone, and objecting to such an activity on its face, without any demonstration that such activity may impact a state's coastal zone.

We recommend that Commerce amend section 930.3 as follows:

- To require that OCRM conduct a continuing review of the states' application of their enforceable programs on at least a semiannual basis;
- The goal of such review would be, among others, to ensure that the states have supporting documentation and justification for an objection to a proposed federal activity, and that the states are not using their CZM programs to prevent a certain category of activity from taking place in or outside their coastal zone.

Similarly, we recommend that the definition of "enforceable policy" in section 930.11 be changed to delete the statement that "Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency." The proponent of the federal activity must interact with the State in any event, as that is one of the underlying purposes of the federal consistency requirements, to ensure that states have a role in the evaluation of any project which may effect their coastal zone. Additionally, the above statement that "enforceable policies need not establish detailed criteria..." confuses and conflicts with the previous statement in the definition that: "An enforceable state policy shall contain standards of sufficient specificity to guide public and private uses." State standards that are vague are apt to strain the efficiency and fairness of the consistency process. They give the state too much discretion to object to a federal activity based on consistency grounds without requiring an explanation of the basis of their objection, or tying their objection to a particular enforceable policy.